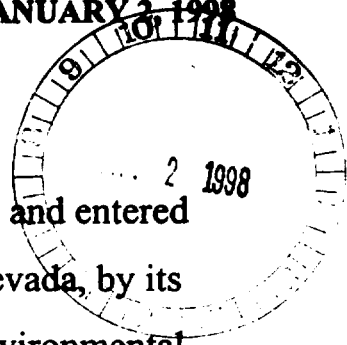


DRAFT - JANUARY 2, 1998



## **CONSENT AGREEMENT**

This Consent Agreement (the "Consent Agreement") is made and entered into this first day of February, 1998, by and between the State of Nevada, by its Department of Conservation and Natural Resources, Division of Environmental Protection (the "Division") and American Pacific Corporation (the "Company"). The Company and the Division are referred to collectively herein as the "Parties."

**WHEREAS**, the Division is designated as the state water pollution control agency for Nevada and is empowered to administer and enforce the Nevada Water Pollution Control Law, Nevada Revised Statutes ("NRS") §§ 445.131 to 445.354, inclusive; and

**WHEREAS**, the Division is designated as the state agency for the regulation of hazardous waste and is empowered to administer and enforce the Nevada Hazardous Waste Disposal Law, NRS §§ 459.400 to 459.600, inclusive; and

**WHEREAS**, the Division has communicated to the Company its intention to require the investigation, characterization and, if such investigation and characterization demonstrates it to be necessary, remediation of Releases at or associated with the Company's former Plant Site located at Henderson, Nevada, if it is determined that such Releases may pose a threat to human health, welfare, or the Environment resulting from industrial operations and Environmental Contaminant management activities at or associated with the Site; and

**WHEREAS**, because the Site was the subject of a Clean Close administered by the Division, the Company had no reason to anticipate the current concern regarding possible contamination of the Site; and

**WHEREAS**, nonetheless, the Company has cooperated fully, and desires to continue to cooperate fully with the Division to investigate, characterize and, if demonstrated to be necessary, remediate in a prompt and satisfactory manner Releases at, or associated with, the former Site if it is determined that such Releases may pose a threat to human health or the Environment; and

**WHEREAS**, the State of California, Department of Health Services ("DHS") has identified the anion perchlorate ("ClO4") as a pollutant; and

**WHEREAS**, DHS has acknowledged that there is limited scientific evidence regarding the level at which exposure to ClO4 may have adverse effects on public health and the environment, and therefore has established a provisional action level for the concentration of ClO4 in ground water for human consumption of four to eighteen parts per billion ("ppb") by weight, 4 - 18 ppb, and in the calculation of this level has divided the possible adverse effect concentration level (1200 to 5400 ppb) by an Uncertainty Factor of 300 to provide a full margin for the uncertainty in the scientific knowledge; and

**WHEREAS**, no formal designation of ClO4 as a pollutant or an action level therefor has been established by the EPA or the State of Nevada; and

**WHEREAS**, until scientific investigations currently in progress establish an official recognition of ClO4 as a pollutant and an action level in the State of Nevada, the Division and the Company agree that it is prudent in light of potential

environmental effect and public concern to proceed with the work necessary to characterize the actual concentration of ClO<sub>4</sub> in the ground water associated with the Site without prejudice to the position of either of the Parties; and

**WHEREAS**, in collaboration with the Division, the Company has completed an initial analysis of the content of monitoring wells at or near the Site, and has provided to the Division a Work Plan including a schedule to complete that characterization as well as a study of the hydrogeology of the Site area and a review of previous studies, maps, investigations; and

**WHEREAS**, the results of the investigation to date have not demonstrated that any of the ClO<sub>4</sub> originating from the Site has reached the Las Vegas Wash, and that therefore at this time there is no credible evidence of contamination from the Site of sources of drinking water; and

**WHEREAS**, the parties recognize that scientific inquiry into ClO<sub>4</sub> as a pollutant and appropriate action levels therefor, and possible methods of remediation, if and as necessary, are in the early stages; and

**WHEREAS**, under these circumstances, the proper public policy is to gather sufficient and appropriate scientific information regarding the actual health and environmental effects of ClO<sub>4</sub>, and possible methods of remediation, in order to devise and implement cost-effective protection of the public health and the Environment; and

**WHEREAS**, the Company has agreed through this Consent Agreement to continue to work with the Division to (1) characterize the Site, including the study of the Site area hydrogeology and contents of Site area aquifers, to determine the

structure of the aquifers, the presence and concentration of ClO<sub>4</sub> originating from the Site in different aquifer levels, the path of migration, the rate of migration and the composition of the material in question; (2) collaborate in on-going efforts to establish valid scientific bases for action levels for ClO<sub>4</sub>; and (3) support efforts to investigate cost-effective methods of remediation of ClO<sub>4</sub>, based on scientifically valid action levels.

**NOW, THEREFORE**, in consideration of and in exchange for the mutual undertakings and covenants herein, and intending to be legally bound hereby, the Division and the Company agree as follows:

## **I. DEFINITIONS**

The following terms shall have the meanings specified for purposes of this Consent Agreement:

1. "Administrator" means the Administrator of the Nevada Division of Environmental Protection.
2. "AMPAC" means American Pacific Corporation, also referred to as the "Company". Pacific Engineering and Production Co. of Nevada ("Pepcon") is a wholly owned subsidiary of American Pacific Corporation.
3. "Clean Close" means the satisfactory and documented removal of all identified environmental contaminants from a site under provisions of a Division approved plan.
4. "DHS" means the Department of Health Services of the State of California.

5. "Company" means American Pacific Corporation. Pacific Engineering and Production Co. of Nevada ("Pepcon") is a wholly owned subsidiary of American Pacific Corporation.

6. "Consent Agreement" means this Consent Agreement and includes all attachments, Division-approved workplans (including schedules and attachments), Division-approved Deliverables, amendments, modifications and items incorporated by reference as provided in Section XXVIII.

7. "Contractor" means any entity or person, including any contractor, subcontractor, consultant, firm or laboratory, retained by the Company or the Division to conduct or monitor any portion of the work performed pursuant to this Consent Agreement.

8. "Deliverable" means, without limitation, any workplan, report, progress report, plan, data, document, information, submittal, obligation or work which the Company is required to submit to the Division under the terms of this Consent Agreement.

9. "Division" means the State of Nevada, Department of Conservation and Natural Resources, Division of Environmental Protection, or its successor department or agency of the State of Nevada.

10. "Effective Date" means the date on which this Consent Agreement becomes effective, as specified in Section XXIX. The effective period of this Consent Agreement means the period of time between the Effective Date and the date upon which this Consent Agreement terminates as specified in Section XXX.

11. "Environment" means air, land (including subsurface strata), and water (including groundwater) or any combination or part thereof.

12. "Environmental Contaminant" means any element, compound, mixture, solution or substance, the Release of which may present a substantial endangerment to human health, welfare, or the Environment regulated by the Division under any applicable Environmental Law including, without limitation, any "solid waste," "hazardous waste," "hazardous constituent," "hazardous substance," "regulated substance," "pollutant," "contaminant," "radioactive material," "air contaminant," "imminently hazardous chemical substance or mixture," "hazardous material," or other substance so defined by any applicable Environmental Law.

13. "Environmental Law" means each federal and state law and regulation relating in any way to Environmental pollution or the protection of the Environment or the Release of any Environmental Contaminant into the Environment including, without limitation, the Nevada Water Pollution Control Law, NRS §§ 445.131 to 445.354, the Nevada Solid Waste Disposal Law, NRS §§ 444.440 to 444.650, the Nevada Hazardous Waste Disposal Law, NRS §§ 459.400 to 459.600, the Nevada Air Pollution Control Law, NRS §§ 445.401 to 445.710, the Nevada Underground Storage Tank Law, NRS §§ 459.800 to 459.856, the Nevada Radiation Control Law, NRS §§ 459.010 to 459.290, the Clean Air Act, 42 U.S.C. §§ 7401-7671q, the Federal Water Pollution Control Act, 33 U.S.C. §§ 1251-1387, the Solid Waste Disposal Act, as by the Resource Conservation and Recovery Act, 42 U.S.C. §§ 6901-6992k, the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. §§ 9601-9675, and the Toxic Substances Control Act, 15 U.S.C. §§ 2601-2692, each as

may be amended from time to time, and including the implementing regulations promulgated respectively thereunder.

14. "EPA" means the United States Environmental Protection Agency or its successor department or agency.

15. "NAC" means the Nevada Administrative Code or its successor codification of rules and regulations.

16. "NRS" means the Nevada Revised Statutes or its successor codification.

17. "Pepcon" means Pacific Engineering and Production Co. of Nevada, a wholly owned subsidiary of American Pacific Corporation and the original operating company at the former site in Nevada.

18. "Perchlorate" means the naturally-occurring and man-made chemical anion chlorine tetraoxide,  $\text{ClO}_4$ , which is normally combined with one of the cations, potassium, ammonium, sodium, or magnesium.

19. "Receptor" means any appropriate and representative population, community or habitat of any biological organism (including humans, animals and plants) which is or may be affected by Releases of Environmental Contaminants at or associated with the Site.

20. "Release" means any past or present spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, migrating, dumping, or disposing of any Environmental Contaminant into the Environment (including the abandonment or discarding of barrels, containers, and other closed receptacles containing any Environmental Contaminant) .

21. "Site" means all land associated with the former site of the Company in Henderson, Nevada, as more particularly described in Attachment A.

22. "State" means the State of Nevada, including, as appropriate, its agencies, departments, political subdivisions, agents and employees.

23. "Study Item" means the location of each Release, waste management unit or facility, Environmental Contaminant source, or issue of concern at or associated with the Site which is either identified as a Study Item or an area of additional work under Section IV(D) (Additional, Alternative or Accelerated Work).

24. "Uncertainty Factor" means a mathematical number or factor which comprehends an effort by its use to provide a safety margin when identifying the potential human health hazard of the exposure to a chemical or substance. In its subject application, the factor is the result of the multiplication of three independent concerns, each with a maximum quantity of 10: a) studies of short duration instead of long-term chronic exposure, b) protection of sensitive individuals, c) deficiencies in data available.

## **II. STATEMENT OF PURPOSE**

In entering into this agreement, the mutual objectives of the Division and the Company are: (1) to perform an Environmental Conditions Investigation as described in Section IV.A; (2) to perform such Remedial Alternative Study(ies), Interim Remedial Measures or Additional Work as may be required and as provided in Section IV. The Parties intend that the work to be performed in accordance with Section IV (including all approved workplans), and accepted by



the Division, will be consistent (to the extent appropriate and applicable) with the National Contingency Plan, 40 C.F.R. § 300.1 et seq.

### **III. PARTIES BOUND**

1. The provisions of this Consent Agreement shall apply to and be binding upon the State, the Division, including the Department of Conservation and Natural Resources (the "Department"), and upon the Company, its successors and assigns.

2. Any change in ownership or corporate or partnership status of the Company and any conveyance of title, easement, or other real property interest in the Site, or a portion of the Site, shall in no way alter the Company's responsibilities under this Consent Agreement. In the event that the Company proposes to sell or transfer all or a portion of the Site, or any real property subject to this Consent Agreement, such Company shall, prior to such sale or transfer, provide written notice to such purchaser or transferee of the existence and terms of this Consent Agreement and any Environmental Conditions Investigation, and shall provide written notice to the Division concerning the sale or transfer no later than fifteen (15) days after such sale or transfer.

3. The Company shall provide a copy of this Consent Agreement to all Contractors retained by it to conduct or monitor any portion of the work performed under this Consent Agreement not more than fourteen (14) days after either the Effective Date of this Consent Agreement or the date on which such Contractor is retained, whichever is later. The Company shall use best efforts to cause such persons or entities to comply with the terms of this Consent Agreement.

4. The Company agrees to undertake all actions required by the terms and conditions of this Consent Agreement, including any portions of this Consent Agreement that are incorporated by reference and made enforceable hereunder as specified in Section XXVIII.

5. The undersigned representative of each Party to this Consent Agreement certifies that he or she is fully authorized by the Party whom he or she represents to enter into the terms and conditions of this Agreement and to execute and legally bind that Party to it.

#### **IV. WORK TO BE PERFORMED**

The Company agrees to perform the work specified in this Consent Agreement in the manner and by the dates specified herein. All work undertaken pursuant to this Consent Agreement by the Company and/or its Contractor(s) shall be performed pursuant to the Division-approved workplans required hereunder, and in a manner consistent with all applicable federal and Nevada statutes and their implementing regulations, including all applicable Environmental Laws. The Parties shall also consider applicable or relevant EPA or Division guidance documents identified by the Division, including the October 1995 guidance for an Environmental Conditions Investigation and the February 1996 guidance for a Remedial Alternatives Study, and provided to the Company by the Division.

##### **A. ENVIRONMENTAL CONDITIONS INVESTIGATION.**

1. The Company has submitted to the Division for its review and approval an Environmental Conditions Investigation Workplan. The Environmental Conditions Investigation Workplan is subject to approval by the

Division in accordance with Section VI (Deliverables Requiring Division Approval).

2. The Environmental Conditions Investigation Workplan details the activities, procedures and methodologies the Company shall undertake and use to perform the Study Item characterization, evaluation or information-gathering requirements. A specific schedule for the implementation of all Environmental Conditions Investigation activities shall be included in the Environmental Conditions Investigation Workplan. Such schedule shall provide for the appropriate phasing of Environmental Conditions Investigation activities and the submission of deliverables to the Division (including the submission of discrete portions of the Environmental Conditions Investigation Report as investigatory work concerning specific Study Items is completed) so as to achieve the efficient and timely completion of the Environmental Conditions Investigation in a manner consistent with appropriate Division oversight and with appropriate consideration of the complexity and scope of, and interrelationships among, specific Study Items. The Environmental Conditions Investigation shall result in data of adequate technical quality to support the development and evaluation of remedial alternatives during a subsequent study (including, without limitation, any Remedial Alternatives Study).

3. Within sixty (60) days from the effective date of this Consent Agreement, the Company shall submit solely for the Division's information purposes a Health and Safety Plan. The Company may submit a single Health and Safety Plan that addresses all investigations and activities required pursuant to this Consent Agreement. Notwithstanding any other provision of this Consent Agreement, no Division approval, disapproval, decision or determination (or the

absence thereof) rendered pursuant to this Consent Agreement on the matters addressed herein shall constitute, or be deemed by any entity or person to constitute, an express or implied approval, endorsement, opinion or determination of or by the Division with respect to any health or safety practice, standard or procedure proposed, implemented or complied with by any person or entity whatsoever in conjunction with any activities conducted pursuant or in any way relating to this Consent Agreement.

**B. REMEDIAL ALTERNATIVES STUDY.**

1. Following Division approval of any portion of, or the entirety of, the Environmental Conditions Investigation Report pertaining to one or more Study Items, the Company shall, within sixty (60) days following receipt of a written notice from the Division specifying the reasons it believes a Remedial Alternatives Study is necessary, submit to the Division for its review and approval a Remedial Alternatives Study Workplan addressing each Study Item identified in the Division's notice. Each Remedial Alternatives Study workplan so submitted is subject to approval by the Division in accordance with Section VI (Deliverables Requiring Division Approval).

2. A specific schedule for the implementation of all Remedial Alternatives Study activities shall be included in each Remedial Alternatives Study workplan. Such schedule shall provide for the appropriate phasing of Remedial Alternatives Study activities and Deliverable submissions so as to achieve the efficient and timely completion of the Remedial Alternatives Study in a manner consistent with appropriate Division oversight and with appropriate

consideration of the complexity and scope of, and interrelationships among, specific Study Items.

3. Any determination made by the Division pursuant to this Section IV.B and any work undertaken pursuant to an approved Remedial Alternatives Study Workplan shall be subject to the other provisions of this Consent Agreement, including without limitation, the provisions of Section XV (Dispute Resolution). However, judgments, conclusions or recommendations included in any Deliverable submitted by the Company pursuant to a Division approved Remedial Alternatives Study Workplan shall not be subject to Division approval pursuant to Section VI herein.

**C. INTERIM REMEDIAL MEASURES.**

1. If, at any time during the effective period of this Consent Agreement, the Division determines, based upon consideration of any of the factors specified in paragraph 2 below, that any Release or threatened Release at, or associated with, the Site may pose an imminent and substantial hazard to human health, welfare, or the Environment, the Division may notify the Company in writing of the measure(s) the Division has determined need to be developed and implemented by the Company to mitigate the imminent and substantial hazard ("Interim Measure(s)"). If deemed appropriate by the Division, the identification of such Interim Measure(s) may be deferred pending the collection by the Company of additional data or information requested by the Division. Upon receiving such written notice, the Division and the Company shall negotiate in good faith whether and to what extent such Interim Measures are required.

2. The following factors may be considered by the Division, inter alia, in determining whether any Interim Measure(s) should be required:

- a. the time required to develop and implement a final remedial measure;
- b. actual or potential exposure of nearby Receptors to Environmental Contaminants;
- c. actual or potential contamination of drinking water supplies or sensitive ecosystems;
- d. further degradation of the Environmental medium which may occur if an Interim Measure is not implemented expeditiously;
- e. the presence of Environmental Contaminants in drums, barrels, tanks, or other bulk storage or disposal containers or facilities that may pose a threat of Release;
- f. weather conditions that may cause Environmental Contaminants to be Released;
- g. risks of fire or explosion, or potential for exposure to Environmental Contaminants as a result of an accident or failure of a container, facility, or handling system; or
- h. any other factor that may indicate the existence of a threat to human health, welfare, or the Environment.

1. If, at any time during the effective period of this Consent Agreement, the Company determines that information or data has been identified or developed indicating that any Release or threatened Release at or associated with the Site poses a potential threat to human health, welfare, or the Environment of a degree as reasonably requires the prompt development and implementation of an Interim Measure(s), the Company shall so notify the Division (1) orally within twenty-four (24) hours, and (2) in writing within three (3) days following the

making of such determination, summarizing the immediacy and magnitude of the potential threat.

2. Within sixty (60) days following any agreement by the Division and the Company regarding the proposed Interim Measures that are the subject of a Division notification pursuant to paragraph 1, the Company shall submit to the Division a workplan for the development and implementation of Interim Measure(s) ("Interim Measure(s) Workplan") as identified in such notification. Each Interim Measure(s) Workplan is subject to approval by the Division. Each Interim Measure(s) Workplan shall address, as appropriate and without limitation:

- a. objectives of the Interim Measure(s);
- b. technical approach;
- c. engineering design and planning (including Division approval of all design plans and specifications);
- d. schedule for development and implementation of the Interim Measure(s);
- e. qualifications of personnel performing the development or implementation of the Interim Measure(s), including Contractor personnel;
- f. health and safety planning;
- g. data collection quality assurance, strategy, management, and analysis;
- h. construction quality assurance, including inspection activities, sampling requirements, documentation and certification of construction consistent with Division approved designs;
- i. operation and maintenance of the Interim Measure(s);

- j. document/data submittals for Division approval; and
- k. regular progress reporting during the development and implementation of the Interim Measure(s).

1. Interim Measure(s) shall, to the extent practicable, be consistent with the objectives of, and contribute to the performance of, any long term solution at the Site.

2. In the event that the Company and the Division reach agreement with respect to an Interim Measure(s) Workplan, any work undertaken by the Company pursuant thereto shall be governed by the other provisions of this Consent Agreement, including without limitation, the provisions of Section XV (Dispute Resolution). In the event that the Company and the Division are unable to reach agreement with respect to the need for or contents of an Interim Measure(s) Study Workplan, any dispute between the Division and the Company shall be governed by the other provisions of this Consent Agreement, including without limitation, the provisions of Section XV (Dispute Resolution).

**D. ADDITIONAL, ALTERNATIVE OR ACCELERATED WORK.**

1. The Company may propose that certain response actions, including, without limitation, investigatory or characterization work, engineering evaluation, or procedure/methodology modifications, are necessary in addition to, in lieu of, or on an accelerated schedule relative to the tasks, schedules and Deliverables required pursuant to this Consent Agreement in order to address appropriately the investigation, characterization, evaluation, abatement, minimization, stabilization, mitigation, or elimination of Environmental Contaminants at or associated with the Site or any particular Study Item. If the



Division agrees with the Company's additional, alternative or accelerated work proposal, the Division will notify the Company in writing. Thereafter, the Company shall perform the additional work according to a workplan prepared by the Company and approved by the Division (or a modification to an existing Division-approved workplan). All additional work performed by any Company under this paragraph shall be performed in a manner consistent with this Consent Agreement. Nothing in this Section shall affect the Parties' reserved rights under Section XIX of this Consent Agreement.

2. If the Division determines that additional work, including, without limitation, investigatory or characterization work, engineering evaluation, or procedure/methodology modifications, is necessary in order to address appropriately the investigation, characterization, evaluation, abatement, minimization, stabilization, mitigation, or elimination of Environmental Contaminants at or associated with the Site or any particular Study Item, the Division shall notify the Company in writing of such work required to be performed by the Company, and shall provide an accompanying statement of the reasons and determinations therefor. The Company shall negotiate in good faith with the Division regarding whether and to what extent such additional work shall be undertaken.

3. In the event that the Company and the Division reach agreement with respect to any additional, alternative or accelerated workplan, the work undertaken by the Company pursuant thereto shall be governed by the other relevant provisions of this Consent Agreement, including without limitation, the provisions of Section XV (Dispute Resolution). In the event that the Company and the Division are unable to reach agreement with respect to the need for or contents

of any additional, alternative or accelerated workplan, the dispute between the Division and the Company shall be governed by the other relevant provisions of this Consent Agreement, including without limitation, the provisions of Section XV (Dispute Resolution).

**E. NO FURTHER ACTION.**

1. If at any time the Company believes that sampling results, the performance of other work or other circumstances demonstrate that, with respect to any portion of the Site, no further response actions are required or necessary to protect public health and the environment, the Company may propose that such portion of the Site no longer be subject to the requirements of this Consent Agreement. If the Division agrees, the Division shall issue a written notice that the affected area is no longer subject to the requirements of this Consent Agreement and may be improved, sold, or otherwise conveyed without further adherence to the requirements of this Consent Agreement. The Division's disapproval of or failure to act upon (within sixty (60) days) a proposal made under this Section shall be subject to dispute resolution under Section XV.

2. In making any determination hereunder, the Division may consider within its statutory discretion any and all relevant factors including, without limitation:

- a. existing and potential or planned land uses for such portion of the Site and environmental and human exposure threats associated therewith;
- b. whether the issuance of such written notice would preclude or significantly and adversely affect the investigation or remediation of Environmental Contaminants at or associated with the Site;

- c. the sampling data or other information and circumstances relied upon by the Company; and
- d. applicable or relevant and appropriate environmental cleanup standards (including, without limitation, any Division policies regarding contaminated soil and groundwater remediation).

6. The issuance by the Division of a written exclusion notice hereunder shall not constitute or be construed as either: (1) a release, covenant not to sue, or any other limitation whatsoever on the authority of the Division to respond to existing or subsequently-identified environmental conditions at or associated with the Site; or (2) a determination, decision or opinion regarding the suitability of any particular land use for the Site.

**F. NEVADA HAZARDOUS WASTE DISPOSAL LAW COMPLIANCE**

1. For purposes of this Section IV.F, the terms "hazardous constituent," "hazardous waste," "landfill," "land treatment unit," "pile" and "surface impoundment" shall have the meanings specified in 40 C.F.R. 260.10, each as respectively adopted by reference in the Nevada Hazardous Waste Disposal Law program by NAC 444.8632. The term "Subject Unit" means each landfill, land treatment unit, surface impoundment, or waste pile unit located at the Site which received hazardous waste after July 26, 1982, or with respect to which closure was certified pursuant to 40 C.F.R. 265.115, as adopted by reference in the Nevada Hazardous Waste Disposal Law program by NAC 444.8632, after January 26, 1983.

2. With respect to each Study Item which also is a Subject Unit that was closed by removal or decontamination, the Company shall include in the

Environmental Conditions Investigation Workplan required by Section IV.A.1, such tasks as are necessary to demonstrate that the closure met the standards for closure by removal or decontamination in 40 C.F.R. 264.228, 264.280(e), or 264.258, as respectively adopted by reference in the Nevada Hazardous Waste Disposal Law program by NAC 444.8632.

3. With respect to each Study Item which also is a Subject Unit that was not closed by removal or decontamination in accordance with the standard specified in the preceding Paragraph 2, the Company shall include in the Environmental Conditions Workplan required by Section IV.A.1 such tasks as are necessary to develop the groundwater monitoring and hazardous constituent release characterization information specified in Subpart F of 40 C.F.R. Part 264 and 40 C.F.R. 270.14(c), as respectively adopted by reference in the Nevada Hazardous Waste Disposal Law program by NAC 444.8632.

## **V. PUBLIC PARTICIPATION**

1. Subject to the provisions of Section XI (Confidential Business Information), all Deliverables received by the Division may be made available to the public in accordance with applicable law. The Division may, at its discretion, conduct a public notice or comment procedure with respect to any Environmental Conditions Investigation Report or Remedial Alternatives Study delivered pursuant to this Consent Agreement. The Division shall notify the Company in writing of its determination to provide for, or legal requirement governing, public notice or comment with respect to such document as well as the corresponding adjustment that shall be made to any affected work or Deliverable submittal or approval schedule. Following any such notice and comment period, the Division

may require the Company to revise the Deliverable and/or perform reasonable additional work necessary to address appropriately any issue regarding such document identified by the public during such comment period.

## **VI. DELIVERABLES REQUIRING DIVISION APPROVAL**

1. After review of any Deliverable which is required to be submitted for approval pursuant to this Consent Agreement, the Division shall: (1) approve, in whole or in part, the Deliverable; (2) approve the Deliverable upon specified conditions; (3) modify the Deliverable to cure deficiencies and approve the Deliverable as so modified; (4) disapprove, in whole or in part, the Deliverable, directing that the Company modify the Deliverable; or (5) any combination of the above. The Division will provide a written statement of reasons for any approval with conditions, approval with modifications, or disapproval. Notwithstanding any other provision of this Consent Agreement and with respect solely to the first submission to the Division by the Company of a particular Deliverable, if the Division either approves the Deliverable upon conditions or modifies the Deliverable to cure deficiencies and approves the Deliverable as so modified, then the Company shall be deemed to have submitted such Deliverable timely and adequately and no stipulated penalties shall accrue.

2. In the event of approval, approval upon conditions, or modification and approval by the Division pursuant to the preceding paragraph, the Company shall proceed to take any action required by the Deliverable, as approved or modified and approved by the Division, subject only to its right to invoke the Dispute Resolution procedures set forth in Section XV (Dispute Resolution) with respect to the modifications or conditions made by the Division.

a. Upon receipt of a notice of disapproval pursuant to paragraph 1 of this Section, the Company shall, within thirty (30) days, or such later time as may be specified in such notice, correct the deficiencies in all material respects and resubmit the Deliverable for approval. Any stipulated penalties applicable to the Deliverable, as provided in Section XIV, shall accrue after such thirty (30) day or otherwise specified period, but shall not be payable unless the resubmitted Deliverable is disapproved or modified and approved due to a material defect.

b. Notwithstanding the receipt of a notice of disapproval pursuant to paragraph 1 of this Section, the Company shall proceed, at the written direction of the Division, to take any action required by any nondeficient portion of the Deliverable. Implementation of any nondeficient portion of a Deliverable shall not negate the Division's right to seek penalties for the deficient portion under Section XIV (Stipulated Penalties).

1. In the event that a resubmitted Deliverable, or portion thereof, is disapproved by the Division, the Division may again require the Company to correct the deficiencies in all material respects, in accordance with the preceding paragraphs. The Division also retains the right to amend or develop the Deliverable. In the event that the Division modifies and approves a resubmitted Deliverable to cure deficiencies pursuant to the preceding paragraph such modification and approval shall not negate the Division's right to seek penalties for the deficiencies of the Deliverable as originally submitted as provided in Section XIV (Stipulated Penalties). The Company shall implement any such Deliverable as amended or developed by the Division, subject only to its right to invoke the procedures set forth in Section XV (Dispute Resolution).

2. If upon resubmission, a Deliverable is disapproved or modified and approved by the Division due to a material defect, the Company shall be deemed to have failed to submit such Deliverable timely and adequately unless the Company invokes the dispute resolution procedures set forth in Section XV (Dispute Resolution) and the Division's disapproval or modification is overturned pursuant to that Section. The provisions of Section XV (Dispute Resolution) and Section XIV (Stipulated Penalties) shall govern the implementation of the required work and the accrual and payment of any stipulated penalties during dispute resolution. If the Division's disapproval or modification is upheld, stipulated penalties shall accrue for such violation from the date on which such Deliverable was required.

3. Notwithstanding any provision of this Consent Agreement to the contrary, the Division may not assess any stipulated penalty hereunder for any period of time associated with Division review of any Deliverable (including resubmitted Deliverables) in excess of thirty (30) days from the date such Deliverable was submitted to the Division. Nothing in this paragraph shall affect the Division's ability to assess stipulated penalties hereunder for and to the extent any Deliverable (including resubmitted Deliverables) is not timely submitted without good cause for the delay.

4. All Deliverables or portions thereof and other items required to be submitted to the Division under this Consent Agreement shall, upon approval or modification and approval by the Division, be deemed incorporated into, and enforceable under, this Consent Agreement as specified in Section XXVIII. In the event that the Division approves or modifies and approves a portion of a Deliverable required to be submitted to the Division under this Consent

Agreement, the approved or modified and approved portion shall be enforceable under this Consent Agreement as specified in Section XXVIII. Oral advice, suggestions, or comments given by Division representatives will not constitute an official approval, nor shall any oral approval or oral assurance of approval be considered binding.

## **VII. DIVISION APPROVAL OF CONTRACTORS AND CONSULTANTS**

1. Except for work performed by employees of the Company, all work performed pursuant to the Consent Agreement shall be under the direction and supervision of a professional engineer, hydrologist, geologist or environmental scientist with expertise in the investigation and remediation of Environmental Contaminants who shall either be or work under the responsible control of an environmental manager certified under Nevada law. Work performed by employees of the Company must be reviewed by a third party consultant acceptable to the Division. Each of the Company's Contractors shall have the technical expertise sufficient to adequately perform all aspects of the work for which it is responsible. Within thirty (30) days following the Effective Date of this Consent Agreement, and before the required work begins, the Company shall notify the Division's Project Coordinator in writing of the names, titles and qualifications of the engineer, hydrologist, geologist or environmental scientist and of any Contractors and their personnel proposed to be used in carrying out the terms of this Consent Agreement. The Company shall identify whether any Contractor is on the List of Parties Excluded from Federal Procurement or Non-Procurement Programs compiled and maintained by the U.S. General Services Administration or on any analogous list compiled and maintained by the State.



2. The qualifications of Key Project Personnel, including the principal project manager and, if different, any Certified Environmental Manager (CEM) undertaking the work for the Company shall be subject to the Division's review and approval, for verification that such persons meet minimum technical background and experience requirements. The Division reserves the right to disapprove the Company's Key Project Personnel for good cause shown at any time during the effective period of this Consent Agreement. If the Division disapproves any Key Project Personnel proposed by the Company to perform work pursuant to this Consent Agreement, then the Company shall, within thirty (30) days after receipt from the Division of written notice of such disapproval, notify the Division in writing of the name, title and qualifications of any replacement. The Division's disapproval under this Section shall be subject to review in accordance with Section XV of this Consent Agreement.

3. During the effective period of this Consent Agreement, the Company shall notify the Division in writing of any changes or additions in the Key Project Personnel used to carry out the work required by the Consent Agreement, providing their names, titles and qualifications. The Division shall have the same right to approve changes and additions to such persons as it has hereunder regarding the initial notification.

4. For the purposes of this Section, the term "Key Project Personnel" shall mean those individuals who have primary responsibility for the direction of employees or subcontract personnel for major project tasks, outputs or Deliverables including, but not limited to, data collection, data interpretation and report writing.

5. The Division hereby approves \_\_\_\_\_ as Key Project Personnel, and \_\_\_\_\_ and \_\_\_\_\_ as Contractors, as to work which already has been completed, and as to work to be undertaken pursuant to this Consent Agreement.

## VIII. QUALITY ASSURANCE

1. The Company shall follow EPA and Division guidance for sampling and analysis. Workplans shall contain quality assurance/quality control (QA/QC) and chain of custody procedures for all sampling, monitoring, and analytical activities. Any deviations from the QA/QC and chain of custody procedures in approved workplans must be approved by the Division; must be documented, including reasons for the deviations; and must be reported in the applicable Deliverable.

2. The name(s), addresses, and telephone numbers of the analytical laboratories the Company proposes to use must be submitted to the Division for review and approval prior to work being performed. The Division hereby approves \_\_\_\_\_ as analytical laboratories, both as to work which already has been completed, and as to work to be undertaken pursuant to this Consent Agreement.

3. The Company shall use best efforts to ensure that high quality data is obtained by their Contractor or contract laboratories. The Company shall require that laboratories used by the Company for analysis perform such analysis according to the latest approved edition of "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods" (SW-846) or other methods deemed satisfactory by the Division. The Company shall submit any deviations from the

protocols proposed in any workplan to the Division for its approval thirty (30) days prior to the commencement of analyses, except in extraordinary circumstances. The Division may reject any data that does not meet the requirements of the approved workplan or EPA analytical methods and may require resampling and additional analysis.

4. The Company shall ensure that laboratories it or its Contractor(s) use for analyses participate in a QA/QC program equivalent to that required by EPA under the Contract Laboratory Program (CLP), unless another program is deemed acceptable to the Division. As part of such a program, and upon request by the Division, such laboratories shall perform analyses of samples provided by the Division to demonstrate laboratory performance and the quality of analytical data. If the audit reveals deficiencies in a laboratory's performance or QA/QC, resampling and additional analysis may be required by the Division.

## **IX. SAMPLING AND DATA AVAILABILITY**

1. All final results of sampling, tests, modeling and other data (but not including raw data that has not been subject to QA/QC procedures) generated by the Company, or on the Company's behalf, for the purpose of producing a Deliverable under this Consent Agreement shall be submitted to the Division in any progress report required by this Consent Agreement. The Company shall make all raw data generated for the purpose of producing a Deliverable under this Consent Agreement available to the Division for review on request, and shall submit such data to the Division on written request. The Division will provide to the Company validated data generated by the Division unless it is exempt from disclosure by any federal or state law or regulation.

2. The Company shall notify the Division in writing at least five (5) working days prior to conducting sampling described in any workplan required by this Consent Agreement. If the Company believes it must commence emergency field activities without delay, the Company may seek emergency telephone authorization from the Division Project Coordinator or, if the Division Project Coordinator is unavailable, his/her Bureau Chief, the Administrator, or the Deputy Administrator, to commence such activities immediately. At the Division's oral or written request, the Company shall provide or allow the Division or its authorized representative to take split or duplicate samples of all samples collected by or on behalf of the Company pursuant to this Consent Agreement.

## **X. SITE ACCESS**

1. At all reasonable times, upon three (3) business days written notice and in conformance with any health and safety requirements at the Site, the Division, its Contractors, employees, and/or any duly designated Division representatives carrying out the authority of the Division shall have the authority to enter and freely move about all property at the Site where work, if any, is being performed pursuant to this Consent Agreement for the purposes of, *inter alia*: (1) discussing the work being performed under this Consent Agreement with relevant Company or Contractor personnel; (2) inspecting conditions, activities, the results of activities, records, operating logs, and contracts related to the Site or the Company and their Contractors pursuant to this Consent Agreement; (3) reviewing the progress of the Company in carrying out the terms of this Consent Agreement; (4) conducting such tests, sampling, or monitoring as the Division or its authorized representatives deem necessary; (5) with the written consent of the Company, which shall not be unreasonably withheld, using a camera, sound recording device

or other documentary type equipment; (6) verifying the reports and data submitted to the Division by the Company; and (7) inspecting and copying all nonprivileged records, files, photographs, documents, sampling and monitoring data, and other writings or materials related to work undertaken in carrying out the requirements of this Consent Agreement. Nothing herein shall be interpreted as limiting, waiving or otherwise affecting (1) the Division's right of entry or inspection under state or federal laws; (2) any attorney client, work-product or other privilege with respect to any matter affecting the Company; (3) the Company's right to seek confidential treatment of any matter pursuant to applicable law; (4) the Company's right to accompany representatives of the Division during such site visits or to take split samples; or (5) the rights of any Contractor or any person or entity not a Party to this Consent Agreement.

2. To the extent that the Site or any other property to which access is required for the performance of work required under this Consent Agreement is owned or controlled by persons or entities other than the Company, the Company and the Division shall use best efforts to obtain access to such property for the Company, as well as for the Division and their respective authorized representatives, within thirty (30) working days after the date that the need for access becomes known to the Company. For purposes of this paragraph, "best efforts" shall include, at a minimum, a certified letter from the Company and the Division to the present owners of such property requesting access agreements to permit the Company and the Division, including their respective authorized representatives, to access such property, and the payment of reasonable compensation in consideration of granting access. Any such access agreement shall be incorporated by reference into this Consent Agreement upon execution.

When the Company or the Division obtains such an access agreement, it promptly shall provide to the other's Project Coordinator a copy of each such access agreement. In the event that any necessary agreement for access is not obtained within thirty (30) days following approval of any workplan for which access is required, or following the date that the need for access became known to the Company, the Company shall notify the Division thereafter regarding both the efforts undertaken to obtain access and its failure to obtain such access agreement. The Division shall exercise its applicable statutory authority to obtain access, but the Company shall pay any just compensation required for access as described hereinabove. In the event that the Division obtains access, the Company shall undertake Division- approved work on such property.

3. The Company agrees to indemnify, defend and hold harmless the Division as provided in Section XVIII (Indemnification), for any and all claims arising from the Company's, or its officers', employees', agents' or Contractors' activities on such property.

4. Nothing in this Section or any other provision of this Consent Agreement shall be construed to limit or otherwise affect the Company's liability and obligations with respect to any Release at or associated with the Site.

## **XI. CONFIDENTIAL BUSINESS INFORMATION**

1. All information required by this Consent Agreement will be deemed public information upon submittal to the Division unless the Company requests in writing at the time of submittal that specific information be treated as confidential business information in accordance with NRS 459.555 or 445.311 and the Division grants the request. Pending such determination and any appeals thereof,

the Division shall treat such information as confidential. Any assertion of confidentiality shall be adequately substantiated in writing by the Company when the request is made.

2. The Company agrees not to assert any confidentiality claims with respect to any data related to Site conditions, sampling, or monitoring except in those instances where a Company official certifies in writing at the time such data is submitted to the Division that specific data related to Site conditions is entitled to protection as a "trade secret" pursuant to the standards set forth in NRS sec. 459.3846(3)(a)-(d). The Division shall treat such data as confidential if the Company has established to the satisfaction of the Division at the time of the certification submittal that the data is entitled to protection as a "trade secret" and pending such determination and any timely appeals thereof.

## **XII. RECORD PRESERVATION**

1. The Company shall retain, during the effective period of this Consent Agreement and for a minimum of ten (10) years following termination of this Consent Agreement, all data, records, documents, and Deliverables (but excluding drafts, duplicates and privileged materials) which it now has in its possession or control or which come into its possession or control, which relate in any way to this Consent Agreement and to the management and/or disposal of Environmental Contaminants at the Site as they relate to this Consent Agreement. Information within the possession or control of the Company shall include all data, documents and records in the possession of its divisions, officers, directors, employees, agents, successors and assigns. After the expiration of such ten-year period, the Company shall notify the Division, or its successor, at least ninety (90) days prior

to the scheduled destruction of such data, records, documents or Deliverables and shall provide the Division or its successor with the opportunity to take possession of such materials. Such written notification shall reference the effective date and caption of this Consent Agreement and shall be addressed to:

Nevada Division of Environmental Protection  
333 W. Nye Lane  
Carson City, Nevada 89710  
ATTENTION: Chief, Bureau of Corrective Actions

2. The Company further agrees that within thirty (30) days after retaining or employing any Contractor for the purpose of carrying out the terms of this Consent Agreement, the Company shall enter into an agreement with such Contractor which requires such Contractor to provide the Company with a copy of all Deliverables prepared or produced pursuant to this Consent Agreement.

3. All documents and data required to be maintained by paragraph 1, other than those documents required for the operations of any Company, shall be stored by the Company in a centralized location in the State of Nevada and the Company shall provide access to such nonprivileged documents and data to the Division and its authorized representatives.

### **XIII. REPORTING AND DOCUMENT CERTIFICATION**

1. Beginning with the first full month following the Effective Date, and throughout the effective period of this Consent Agreement, the Company shall provide the Division with quarterly progress reports. Each progress report shall be filed with the Division no later than fifteen (15) business days after the conclusion of the quarter for which the report provides information. Progress reports shall conform to requirements in the approved workplan.



2. An original and three (3) copies of all Deliverables concerning the activities performed pursuant to the terms and conditions of this Consent Agreement, shall be hand delivered; sent by certified mail, return receipt requested; sent by overnight parcel delivery service; or sent by verified facsimile transmission to the Project Coordinator at the following address:

a. Deliverables or other materials to be submitted to the Division should be sent to:

Nevada Division of Environmental Protection  
333 W. Nye Lane  
Carson City, Nevada 89710  
ATTENTION: Chief, Bureau of Corrective Actions

3. Deliverables or other materials to be submitted to the Company should be sent to:

American Pacific Corporation  
3770 Howard Hughes Parkway  
Suite 300  
Las Vegas NV 89109  
ATTENTION: President

Other addresses also may be designated or approved by the Division Project Coordinator.

4. Any final report prepared pursuant to an approved workplan (other than progress reports) submitted by the Company pursuant to this Consent Agreement shall be certified by a responsible corporate officer of the Company. A responsible corporate officer means: a president, secretary, treasurer, general manager, or vice-president of the corporation in charge of a principal business function, or any

other person who performs similar policy or decision making functions for the Company.

5. The certification required by paragraph 4 above, shall be executed before and notarized by a notary public and shall be in the following form:

“I certify that to the best of my knowledge this document and all attachments were prepared in accordance with a system designed to evaluate the information submitted. I certify that to the best of my knowledge the information contained in or accompanying this submittal and provided by the Company is true, accurate, and complete in all material respects. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.”

Signature: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Company: \_\_\_\_\_

Date: \_\_\_\_\_

#### **XIV. STIPULATED PENALTIES**

1. Unless there has been a written modification by the Division of a compliance date, a written modification by the Division of an approved workplan condition, or excusable delay as defined in Section XVI (Force Majeure) of this Consent Agreement, if the Company fails to comply with any term or condition set forth in this Consent Agreement in the time or manner specified herein, the Division may assess stipulated penalties against the Company as set forth hereinbelow. All penalty amounts set forth herein are maximum amounts. Nothing in this Consent Agreement shall be construed to limit in any manner (except as set forth herein) the Division's prosecutorial discretion with respect to whether to take enforcement action or to assess less than the maximum penalty associated with

any alleged violation of the requirements of this Consent Agreement. Any stipulated penalties assessed pursuant to this Consent Agreement shall be the sole penalties assessable by the Division hereunder against the Company for noncompliance with this Consent Agreement.

a. For failure to submit any Deliverable requiring Division approval on a timely basis as required by this Consent Agreement or any approved workplan:

Continuous Period of Noncompliance	Maximum Penalty Per Day
1 <sup>st</sup> – 21 <sup>st</sup> day	\$50
22 <sup>nd</sup> – 45 <sup>th</sup> day	\$250
46 <sup>th</sup> day and thereafter	\$500

b. For failure to comply with any other provision of this Consent Agreement, including without limitation, failure to (i) commence, perform, and/or complete field work in a manner acceptable to the Division or at the time required pursuant to this Consent Agreement or any approved workplan; (ii) complete and submit to the Division any required workplans, reports or other written submittals (other than progress reports) requiring Division approval in a manner acceptable to the Division as required by this Consent Agreement or any approved workplan; or (iii) comply with Section IV.C.3.

<b>Continuous Period of Noncompliance</b>	<b>Maximum Penalty Per Day</b>
1 <sup>st</sup> – 21 <sup>st</sup> day	\$50
22 <sup>nd</sup> – 45 <sup>th</sup> day	\$250
46 <sup>th</sup> day and thereafter	\$500

c. With respect to violations described in this subparagraph 1 for which the Company has invoked rights to dispute resolution pursuant to Section XII, the maximum penalty assessable for any particular continuous period of noncompliance under this subparagraph 1 shall be \$25,000.

1. Except as otherwise provided herein, all stipulated penalties shall begin to accrue on the day after complete performance is due or the day a violation occurs, and shall continue to accrue through the day that performance is completed or the violation is corrected. A “continuous period of noncompliance,” for purposes of subparagraphs 1.a and 1.b, means any continuous period during which one or more of the violations described respectively therein remain uncorrected. The stipulated penalties set forth in the preceding paragraph shall be in addition to any other non monetary remedies or sanctions which may be available to the Division by reason of the Company’s failure to comply with the requirements of this Consent Agreement.

2. Following any Division determination that the Company has failed to comply with the requirements of this Consent Agreement, the Division may give the Company written notification of the same and describe the noncompliance. Said notice shall also indicate the amount of penalties due.

3. All penalties owed to the Division under this Section shall be payable to the State within thirty (30) days after the Company's receipt from the Division of the notification of noncompliance, unless the Company invokes the dispute resolution procedures under Section XV (Dispute Resolution). Penalties shall not continue to accrue during any dispute resolution period. Penalties assessed under this Section need not be paid until thirty (30) days following the resolution of the dispute pursuant to Section XV if the Division prevails. Interest shall begin to accrue on any unpaid balance at the end of the thirty (30) day period following notification of noncompliance, but shall be suspended during the pendency of any dispute resolution. The Company shall pay interest to the Division as follows: interest shall accrue at the Current Value of Funds Rate established by the Secretary of the United States Treasury.

4. All penalties, including interest, shall be made payable by certified or cashier's check to the State of Nevada and shall be remitted to:

Nevada Division of Environmental Protection  
333 W. Nye Lane  
Carson City, Nevada 89710  
ATTENTION: Chief, Bureau of Corrective Actions

All such checks shall reference the name of the Site and the Company's name and address. Copies of all such checks and letters forwarding the checks shall be sent simultaneously to the Division Project Coordinator.

1. Neither the initiation of dispute resolution proceedings nor the payment of stipulated penalties shall alter in any way the Company's obligation to comply with the terms and conditions of this Consent Agreement and the attachments hereto. Without modifying Paragraph 4 of Section XV, the Parties do not intend

the preceding sentence to require the Company, during the pendency of any good faith dispute, to take actions that would have the effect of mooted the subject of the dispute.

2. If the Company fails to pay stipulated penalties, the Division may institute proceedings to collect the penalties. The Company shall have the right, in any such proceeding, to raise any and all defenses and counterclaims to the enforcement of such penalties.

3. No penalties shall accrue until the Company receives a written notice from the Division identifying the violation, the basis for the violation, and a reasonable time within which the Company is required to correct the violation.

## **XV. DISPUTE RESOLUTION**

1. The Parties shall use their best efforts informally and in good faith to resolve all disputes or differences of opinion. The Parties agree that the procedures contained in this Section are the sole and exclusive procedures for resolving disputes arising under this Consent Agreement. If the Company fails to follow substantially the requirements contained in this Section, then it shall have waived its right to further consideration of the disputed issue through the procedures set forth in this Section XV.

2. If the Company disagrees, in whole or in part, with any written determination by the Division pursuant to this Consent Agreement, the Company's Project Coordinator shall notify the Division Project Coordinator in writing of the dispute ("Notice of Dispute").

3. Any dispute which arises under or with respect to this Consent Agreement shall in the first instance be the subject of informal negotiations between the Parties. The period for informal negotiations shall not exceed thirty (30) days following the date the dispute arises, unless such period is extended by written agreement of the Parties. The dispute shall be considered to have arisen when the Division receives a written Notice of Dispute.

4. In the event that the Parties cannot resolve a dispute by informal negotiations under the preceding paragraph, then the position advanced by the Division shall be considered binding unless, within thirty (30) days after the conclusion of the informal negotiation period, the Company invokes the formal dispute resolution procedures of this Section by serving on the Division Administrator a written Statement of Position which shall set forth the specific points of the dispute, the position the Company claims should be adopted as consistent with the requirements of this Consent Agreement, the basis for the Company's position, any factual data, analysis or opinion supporting that position, any supporting documentation relied upon by the Company, and any matters which it considers necessary for the Administrator's determination. The Statement of Position also may include a request for an opportunity to make an oral presentation of factual data, supporting documentation and expert testimony to the Administrator and to answer questions that the Administrator may pose. It is within the sole discretion of the Administrator to grant or deny a request for an oral presentation.

5. Within thirty (30) days following receipt of a Statement of Position, or by such later date within thirty (30) days after any oral presentation by the Company as the Administrator may deem appropriate to adequately address such

oral presentation, the Administrator shall issue his/her decision which shall be binding on the Company and unappealable unless, within twenty (20) days after receipt of the decision, the Company exercises its rights as stated in paragraph 6 of this Section. The Administrator's written decision shall include a response to the Company's arguments and evidence. The written decision of the Administrator shall be incorporated into and become an enforceable element of this Consent Agreement, and shall be considered the Division's final decision as provided in paragraph 6 of this Section.

6. As to any final Division decision, the Company may pursue the dispute before the State Environmental Commission ("SEC") as a "contested case" pursuant to NRS 233B.010 et seq. and NAC 445.988 - 445.995, and shall be entitled to both administrative and judicial review as provided therein.

7. Except as provided in Section XI (Stipulated Penalties), the existence of a dispute as defined in this Section and the Administrator's consideration of matters placed into dispute shall not excuse, toll, or suspend any compliance obligation or deadline required of the Company under this Consent Agreement during the pendency of the dispute resolution process. Without modifying Paragraph 4 of Section XI, the Parties do not intend the preceding sentence to require the Company, during the pendency of any good faith dispute, to take actions that would have the effect of mooted the subject of the dispute.

## **XVI. FORCE MAJEURE**

1. The Company shall perform the requirements of this Consent Agreement within the time limits prescribed, unless the performance is prevented or delayed by events which constitute a force majeure. The Company shall have the burden of



proving such a force majeure. A force majeure, for purposes of this Consent Agreement, is defined as any event arising from causes not reasonably foreseeable and beyond the reasonable control of the Company, or of any person or entity controlled by the Company, which delays or prevents the timely performance of any obligation under this Consent Agreement despite the Company's commercially reasonable best efforts to fulfill such obligation. A force majeure may include: extraordinary weather events, natural disasters, strikes, lockouts, national emergencies, delays in obtaining access to property not owned or controlled by the Company despite timely best efforts to obtain such access, and delays in obtaining any required approval or permit from the Division or any other public agency that occur despite the Company's complete, timely and appropriate submission of all information and documentation required for approval or applications for permits within a timeframe that would allow the work to proceed in a manner contemplated by the schedule of the Consent Agreement. A force majeure does not include (i) increased costs of the work to be performed under the Consent Agreement, (ii) financial inability to complete the work or (iii) normal precipitation events.

2. If any event occurs or has occurred that may delay the performance of the Company's obligations under this Consent Agreement, whether or not caused by a force majeure event, the Company's Project Coordinator or, in his or her absence, a responsible corporate official, shall notify orally the Division's Project Coordinator or, in his or her absence, the Administrator or Deputy Administrator, as the case may be, within fifteen (15) business days of when the Company first knew or should have known that the event might cause a delay. If the Company wishes to claim a force majeure event, then within ten (10) business days after

giving such oral notification, the Company shall provide to the Division a written explanation and description of the obligation(s) delayed or affected by the force majeure event; the reasons for the delay; the anticipated duration of the delay; all actions taken or to be taken to prevent or minimize the delay; a schedule for implementation of any measures to be taken to prevent or mitigate the delay or the effect of the delay; the Company's rationale for attributing such delay to a force majeure event; and a statement as to whether, in the opinion of the Company, such event may cause or contribute to an imminent and substantial hazard to human health, welfare, or the Environment. The Company shall include with any notice all available documentation supporting its claim that the delay was attributable to a force majeure. Failure to comply with the above requirements shall preclude the Companies from asserting any claim of force majeure for that event.

3. The Division shall notify the Company in writing of its force majeure determination within fifteen (15) days after receipt of the written notice from the Company. If the Division determines that the delay has been or will be caused by circumstances constituting a force majeure event, the time for performance of the obligations under this Consent Agreement that are affected by the force majeure event will be extended by the Division in writing for such time as the Division determines is necessary to complete those obligations. An extension of the time for performance of the obligations affected by the force majeure event shall not, of itself, extend the time for performance of any other obligation, unless the Company can demonstrate to the Division's satisfaction that more than one obligation was affected by the force majeure event.

4. In the event that the Division and the Company cannot agree that any delay or failure has been or will be caused by circumstances constituting a force

majeure, or if there is no agreement on the length of the extension, the dispute shall be resolved in accordance with the dispute resolution provisions set forth in Section XV of this Consent Agreement.

**XVII. REIMBURSEMENT OF DIVISION OVERSIGHT COSTS**

1. Following the Effective Date and for the effective period of this Consent Agreement, the Company shall reimburse the Division for direct costs actually and reasonably incurred solely for oversight of this Consent Agreement in the manner prescribed by Section XVII (Reimbursement of Division Oversight Costs) of this Consent Agreement. The Division shall provide an estimate of the oversight costs, broken down by task and unit cost, semi-annually in advance in writing to the Company, on or before May 1 for the period July 1 to December 31, and on or before November 1 for the period January 1 to June 30. The Division represents to the Company that oversight costs for the first half of calendar 1998 are estimated to be \$ \_\_\_\_\_.

2. Amounts due under this section shall be paid within thirty (30) days after receipt of each invoice by a check payable to the State of Nevada for the full amount due and owing to:

Nevada Division of Environmental Protection  
333 W. Nye Lane  
Carson City, Nevada 89710  
ATTENTION: Chief, Bureau of Corrective Actions

All such checks shall reference the name of the Site and the Company's name and address. Copies of all such checks and letters forwarding the checks shall be sent simultaneously to the Division Project Coordinator. Any failure by

the Company to timely make any payment required under this Section shall be subject to the interest rate specified in Section XIV.

#### **XVIII. INDEMNIFICATION**

The Company agrees to indemnify, defend, save and hold harmless the Division, its Contractors, agents and employees from any and all claims or causes of action arising solely from or solely on account of acts or omissions of the Company or its officers, employees, agents or Contractors in carrying out the activities required by or otherwise pursuant to this Consent Agreement.

#### **XIX. RESERVATION OF RIGHTS**

1. Except as expressly set forth in this Consent Agreement, the State and the Division reserve all statutory and regulatory powers, authorities, rights, and remedies, both legal and equitable, which may pertain to the Company's failure to comply with any of the requirements of this Consent Agreement or of any requirement of federal or state laws, regulations, or permit conditions. Except as provided in Section XXI (Other Claims; Covenant Not to Sue), this Consent Agreement shall not be construed as a covenant not to sue, release, waiver, or limitation of any rights, remedies, powers, and/or authorities, civil or criminal, which the Division has under any applicable Environmental Law or common law authority of the State. This Consent Agreement in no way relieves the Company of its responsibility to comply with any federal, state or local law or regulation.

2. The Division reserves the right to disapprove work performed by the Company pursuant to this Consent Agreement which, in the Division's good faith judgment does not meet the requirements of this Consent Agreement, but any such disapproval shall be subject to Dispute Resolution under Section XV.

3. The Division reserves any and all legal rights and equitable remedies available to enforce (1) the provisions of this Consent Agreement, or (2) any applicable provision of state or federal Law, consistent with the specific terms of this Consent Agreement.

4. If the Division determines that activities in compliance or noncompliance with this Consent Agreement have caused a Release of Environmental Contaminant that may present an imminent and substantial hazard to human health, welfare, and/or the Environment, the Division may order the Company to stop further implementation of this Consent Agreement for such period of time as the Division determines may be needed to abate any such Release and/or to undertake any action which the Division determines is necessary to abate such Release.

5. This Consent Agreement is neither a permit nor a modification of a permit.

6. Notwithstanding any other provision of this Consent Agreement and except as provided in Section XV (Dispute Resolution), no action, or decision by the Division pursuant to this Consent Agreement including, without limitation, decisions by the Administrator, shall constitute final agency action giving rise to any right of judicial review prior to the Division's initiation of a judicial action to enforce this Consent Agreement, including an action to collect penalties or an action to compel the Company's compliance with the terms and conditions of this Consent Agreement.

7. The Company reserves all rights, claims and/or defenses it may have in any action brought or taken by the Division, the EPA or any third party pursuant to applicable law.

8. In any subsequent administrative or judicial proceeding initiated by the State for injunctive or other appropriate relief relating to the Site, the Company shall not assert, and may not maintain, any defense or claim based upon the principles of waiver, claim-splitting, or other defenses based upon any contention that the claims raised by the State of Nevada in the subsequent proceeding were or should have been raised in this Consent Agreement.

9. The Company is entering into this Consent Agreement as a matter of cooperation and compromise of disputed claims. Nothing in this Consent Agreement, nor any action taken pursuant to it, shall be construed as an admission of any fact, circumstance, obligation, error, omission or liability by the Company.

## **XX. COOPERATION IN REVIEW**

With respect to any action by the Company or the Division contemplated by this Consent Agreement (including without limitation the provisions of Section IV) for which a time period is not specified herein or in any relevant workplan, the Company and the Division agree to perform such actions within a reasonable time under the circumstances, so as not to prejudice the other Party.

## **XXI. OTHER CLAIMS: COVENANT NOT TO SUE**

1. Nothing in this Consent Agreement shall constitute or be construed as a release from, or covenant not to sue with respect to, any claim, cause of action, demand or defense in law or equity, against any person, firm, partnership, or

corporation for, or in respect of, any liability it may have arising out of or relating in any way to the generation, storage, treatment, handling, management, transportation, Release, threatened Release, or disposal of any Environmental Contaminant at or otherwise associated with the Site.

2. Notwithstanding any provision of this Consent Agreement to the contrary, the Division covenants not to sue the Company for oversight costs incurred by the Division under this Consent Agreement in excess of the amounts specified in Section XVII. In the event the Division undertakes to perform any work required of the Company under this Consent Agreement, or to issue an order to the Company to complete such work, the Division covenants not to sue the Company for any stipulated penalties accruing or accruable after the date of such undertaking or issuance.

## **XXII. OTHER APPLICABLE LAWS**

All actions required to be taken pursuant to this Consent Agreement shall be undertaken in accordance with the requirements of all applicable local, state, and federal laws and regulations. The Company shall obtain or cause its representative(s) to obtain all permits and approvals necessary under such laws and regulations.

## **XXIII. PROJECT COORDINATORS**

1. Within thirty (30) days following the Effective Date, the Division and the Company each shall designate a Project Coordinator and shall notify each other in writing of the Project Coordinator selected. Each Project Coordinator shall be responsible for overseeing the implementation of this Consent Agreement and for designating a person to act in his/her absence. The Division Project

Coordinator will be the Division's designated representative for the Site. To the maximum extent practicable, all communications between the Company and the Division, and all Deliverables, documents, reports, approvals, and other correspondence concerning the activities performed pursuant to this Consent Agreement, shall be in writing and shall be directed to the appropriate Project Coordinator.

2. The Parties shall provide at least seven (7) days written notice prior to changing Project Coordinators.

3. The absence of the Division Project Coordinator from the Site shall not be cause for the stoppage of work.

#### **XXIV. COMPUTATION OF TIME**

For purposes of computing due dates set forth in this Consent Agreement, the Effective Date, or the day of the act, event, or default from which the designated period of time begins to run, shall be designated and counted as Day zero (0). Calendar days shall be utilized in computing due dates. The last day of the period so computed shall be included, unless it is a Saturday, Sunday, or legal state or federal holiday, in which event the period runs until the end of the next day which is not one of the aforementioned days.

#### **XXV. GOVERNING LAW**

The provisions and interpretation of this Consent Agreement shall be governed by the laws of the State of Nevada.



**XXVI. MODIFICATION**

1. This Consent Agreement may be modified or amended only upon the mutual agreement of the Company and the Division. Any agreed-upon amendment or modification shall be in writing, shall be signed by both Parties, shall have as its effective date the date on which it is signed by the Division, and shall, upon execution, be incorporated into and made enforceable under this Consent Agreement as provided in Section XXVIII.

2. Any requests for a compliance date modification or revision of an approved workplan requirement must be made in writing. Such requests must be timely and provide justification for any proposed compliance date modification or workplan revision. The Division has no obligation to approve such requests, but if it does so, such approval must be in writing. Any approved compliance date or workplan modification shall be incorporated by reference into and made enforceable under this Consent Agreement as provided in Section XXVIII.

3. No informal advice, guidance, suggestions, or comments by the Division regarding any matter associated with this Consent Agreement shall be construed as relieving the Company of its obligation to obtain written approval regarding any Deliverable, if and when required by this Consent Agreement; provided, however, that the Division shall consider the good faith reliance by the Company on such advice in the exercise of its prosecutorial discretion hereunder.

4. No oral or written statement by any Contractor, or by any officer, employee or agent of the Company shall be construed as binding or obligating the Company to the content of such statement, except when accompanied by the certification set forth in Section XIII.

**XXVII. SEVERABILITY**

If any provision or authority of this Consent Agreement or the application of this Consent Agreement to either Party or any circumstances is held by any judicial or administrative authority to be invalid, and such holding does not result in a material change in the rights or obligations of the Parties, the application of such provisions to other circumstances and the remainder of the Consent Agreement shall remain in force and shall not be affected thereby.

**XXVIII. INCORPORATION AND ENFORCEABILITY OF REFERENCED MATERIALS**

The following attachments are incorporated into, and made fully enforceable under this Consent Agreement as if fully set forth herein: Attachment A (Description of Site). Any and all Consent Agreement amendment(s) or modification(s), workplan(s) (including each schedule contained therein and attachments thereto), and Deliverable(s) required hereunder shall, upon execution or Division approval as submitted or modified, be deemed incorporated into and made fully enforceable under this Consent Agreement as if fully set forth herein.

**XXIX. EFFECTIVE DATE**

This Consent Agreement shall become effective on the 1st day of February 1998. This Consent Agreement may be executed in separate counterparts.

**XXX. TERMINATION**

Unless this Consent Agreement is earlier terminated in accordance with its terms, after completion of the work required hereunder, the Company shall submit to the Division a Statement of Completion, which certifies that the Company has fulfilled all obligations under this Consent Agreement, including the

performance of any additional work and the payment of any costs and stipulated penalties to the Division. Within a reasonable time after receipt of the Statement of Completion, the Division shall issue a written notice to the Company that all obligations under this Consent Agreement have been fulfilled. If the Division determines that all obligations have not been fulfilled, such notice shall specify the obligations the Division believes must be fulfilled in order to satisfy this Consent Agreement. Except for the confidential business information and recordkeeping obligations in Sections XI and XII, respectively, of this Consent Agreement, any and all obligations of the Company created by the terms of this Consent Agreement shall be deemed satisfied and shall terminate upon issuance by the Division of written notice that the Company has fulfilled all obligations under this Consent Agreement.

#### **XXXI. MERGER**

This Consent Agreement is the final and complete agreement between the Division and the Company. This final Consent Agreement is the result of extensive negotiations between the Parties over each provision contained herein. Each provision shall therefore be construed to have been mutually drafted and neither Party shall be deemed to have solely drafted this entire Consent Agreement or any single provision herein.

IN WITNESS WHEREOF, the Division and the Company execute this Consent Agreement by their duly authorized representatives on this \_\_\_\_\_ day of \_\_\_\_\_, 1998.

THE STATE OF NEVADA BY ITS  
DIVISION OF ENVIRONMENTAL  
PROTECTION

AMERICAN PACIFIC CORPORATION.

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

APPROVED AS TO FORM ONLY this \_\_\_\_\_ day of \_\_\_\_\_, 1998.

ATTORNEY GENERAL

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

# ATTACHMENT A

STEPHANE STREET

GIBSON ROAD

AMERICAN PACIFIC DRIVE

SITE

UPRR.

LAKE MEAD DRIVE

LIMITS OF CITY OF HENDERSON

